

207146

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

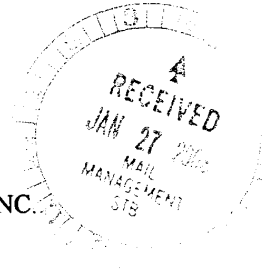
STB Docket No. MC-F-20994

NEW JERSEY TRANSIT BUS OPERATIONS, INC.
-- POOLING --
ACADEMY EXPRESS, L.L.C

ENTERED
Office of Proceedings

JAN 27 2003

Part of
Public Record



EXPEDITED CONSIDERATION RESPECTFULLY REQUESTED

PETITION FOR EXEMPTION
OF
NEW JERSEY TRANSIT BUS OPERATIONS, INC.
and ACADEMY LINES, L.L.C

E. Philip Isaac
Deputy Attorney General
One Penn Plaza East
Newark, NJ 07105-2246
Tel.: (973) 491-7037

Attorney for

NJ TRANSIT BUS OPERATIONS, INC.

Joseph J. Ferrara
111 Paterson Avenue
Hoboken, NJ 07030
Tel.: (201) 798-5010

Attorney for

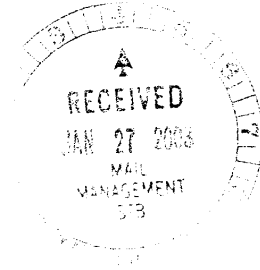
ACADEMY LINES, L.L.C.

Dated: January 27, 2003

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

STB Docket No. MC-F-20994

NJ TRANSIT BUS OPERATIONS, INC.
- POOLING -
ACADEMY LINES, L.L.C.



EXPEDITED CONSIDERATION RESPECTFULLY REQUESTED

PETITION FOR EXEMPTION
OF
NJ TRANSIT BUS OPERATIONS, INC.
and ACADEMY LINES, L.L.C.

Applicants, NJ TRANSIT Bus Operations, Inc., (hereinafter referred to as "NJT Bus"), and Academy Lines, L.L.C. ("Academy"), pursuant to 49 U.S.C. 13541(a), ask that they be exempted from 49 U.S.C. 14302 and 49 C.F.R. 1184.3 so as to enable them to conduct interim operations under their service pooling agreement for a period of not more than fifty (50) days, or such other time as the Board may direct, pending Board action on Petitioners' Application, contemporaneously filed herein, seeking Board approval of a service pooling agreement, and in support thereof Petitioners state, as follows:

A. Identification of Applicants

1. Applicant, NJT Bus, is a corporation of the State of New Jersey, with its principal office at One Penn Plaza East, Newark, New Jersey 07105, telephone number (973)491-7000. NJT Bus is a wholly owned subsidiary of the New Jersey Transit Corporation (hereinafter "NJ TRANSIT"), with its principal office

at One Penn Plaza East, Newark, New Jersey, 07105, telephone Number (973) 491-7000. NJ TRANSIT is an instrumentality of the State of New Jersey exercising public and essential governmental functions. NJ TRANSIT was created by the New Jersey Public Transportation Act of 1979 (N.J.S.A. 27:25-1 et seq.). NJT Bus is a motor carrier of passengers in interstate commerce pursuant to operating authorities issued by the Board's predecessor, The Interstate Commerce Commission. ("ICC"), in Docket No. MC-3647 and sub-numbered proceedings thereunder, and is subject to the jurisdiction of the Board. NJT Bus operates a fleet of about 2,025 buses over approximately 238 bus routes, including commuter operations to and from the Port Authority Bus Terminal in New York, NY ("PABT").

2. Academy is a privately held New Jersey limited liability company, with its principal office at 111 Paterson Avenue, Hoboken, NJ 07030, telephone number (201)420-7000, subject to the jurisdiction of the Board and rendering scheduled, regular-route intercity operations as a motor carrier of passengers, pursuant to authority granted it in Docket No. MC-413682 and sub-numbered proceedings thereunder. It operates a fleet of over 600 buses, primarily in commuter operations from several origins in New Jersey to various locations in New York, NY, including the PABT.

B. The existing service-pool.

1. By its Decision, entered March 12, 1991, in Docket No. MC-F-19737, NJ TRANSIT Bus Operations, Inc. - Pooling - Suburban Trails, Inc., the Board's predecessor, the ICC, approved a service pooling agreement between NJT Bus and Suburban Trails, Inc.

("Suburban"), for the two carriers' operations over U.S. Highway 9, between Lakewood, NJ, and New York, NY, serving a number of intermediate points, including Jackson, Howell, Freehold Borough and Township, Manalapan, Marlboro and old Bridge, NJ (the "Route 9 Corridor").

2. The ICC found that allowing the two bus lines to rationalize their schedules for the Route 9 Corridor operations would provide the public and their passengers with alternative transportation options, resulting in more frequent and convenient motorbus service, without unreasonably restraining competition.

3. In the intervening decade of operations of the service pool, the pooling agreement between NJT Bus and Suburban has exceeded expectations. The ability of commuters to purchase tickets at uniform fares established by NJ TRANSIT and board the buses of either motor carrier, regardless of whose tickets they had purchased, and to depart from and arrive at commonly served facilities has greatly lessened the burdens of traveling to and from work. Moreover, having to wait less time for the buses as a result of the more frequent and better coordinated departures that the motor carriers were able to achieve pursuant to their service pooling agreement has rendered the passengers' commute far more tolerable than it otherwise would be.

4. For reasons about which a reasonable person cannot speculate, Suburban ceased serving the Route 9 Corridor and exited from that market, effective January 3, 2003. Consequently, Suburban has withdrawn from the Route 9 pooling arrangement and has asked NJ

TRANSIT to consider allowing a similar pooling arrangement with Academy. Following negotiations between NJ TRANSIT and Academy, the parties agreed that it would be in their joint interest and in the beneficial interest of the public to enter into a pooling agreement as per the terms and conditions of the attached agreement.

5. Academy presently is a competitor in the Route 9 Corridor, albeit to and from the Wall Street area of lower Manhattan, rather than to and from the PABT in midtown Manhattan. Under the present pooling application contemporaneously filed, Academy proposes to render service to and from the PABT as per the terms and conditions set forth in the attached agreement between NJT Bus and Academy.

6. Academy is prepared to step into the shoes of Suburban and NJ TRANSIT and NJT Bus are willing to have it do so consistent with the terms and conditions agreed to by the parties in the attached agreement. The service pooling agreement which Applicants ask the Board to approve, couched in terms and conditions very similar to that of the service pooling agreement between NJT Bus and Suburban, is intended to effect such substitution.

7. NJT Bus currently operates approximately 123 daily weekday peak period trips in the Route 9 Corridor to and from midtown Manhattan, and Academy anticipates operating approximately 74 daily weekday peak period trips. NJT Bus will provide some service on Saturdays and Sundays but on a substantially reduced basis compared with weekday schedules.

C. Justification for Exemption

1. Pursuant to the statute, 49 U.S.C. 14302(c)(1), and the Board's regulations, 49 C.F.R. 1184.2, the effective date of a pooling agreement cannot be earlier than fifty days from the date of its filing. Neither the statute nor the Board's regulations provides for temporary operations pursuant to a pooling agreement as they do for interim approval of a proposed merger or acquisition of motor carriers of passengers. See, 49 U.S.C. 14303(2) and 49 C.F.R. 1182.7.

2. As already noted, however, Suburban, ceased serving the Route 9 Corridor, effective January 3, 2003.

3. Academy is ready, willing and able to take the place of Suburban, effective upon receiving the Board's authorization, and NJT Bus is agreeable to its doing so as per the parties' pooling agreement. Their service pooling agreement, which is the subject of their Application contemporaneously filed, however, cannot have an effective date before March 15, 2003, unless the Board were to grant the requested exemption.

4. Under 49 U.S.C. 13541(a), however, the Board is obliged to exempt a transaction from the statutory and regulatory provisions which otherwise would apply whenever it finds that application of the provisions (1) is not necessary to carry out the transportation policy of 49 U.S.C. 13101, (2) is not needed to protect shippers from the abuse of market power or service is of limited scope, and (3) is in the public interest. The Petitioners' request that they

be allowed to conduct interim operations pursuant to their service pooling agreement pending Board action thereon fully meets that standard as follows:

1. Transportation Policy.

The interim operations which the requested grant of the exemption would permit would offend none of the provisions of the transportation policy of 49 U.S.C. 13101. To the contrary, exempting the interim operations pursuant to the Petitioners' service pooling agreement from the regulatory requirements that otherwise would apply would advance the transportation policy goals "to promote safe, adequate, economical and efficient transportation;" "to encourage sound economic conditions in transportation, including sound economic conditions among carriers;" to "meet the needs of ... passengers and consumers;" to "allow the most productive use of equipment and energy resources;" and "to provide and maintain commuter bus operations."

2. Protection of shippers from the abuse of market power.

Apart from the technicality that the Petitioners' request that they be allowed to perform interim operations under their service pooling agreement pending Board action thereon affects no shippers of freight, such temporary service will not subject the passengers of NJT Bus and Academy to the abuse of market power. As Petitioners' Application spells out in greater detail, there is ample competition for their pooled operations in the Route 9 Corridor. That competition first and foremost comes from the private automobiles that is a commuter's ready alternative to the

services which Petitioners' propose to render in the Route 9 Corridor. Moreover, the North Jersey Coast Line and the Northeast Corridor Line are not too distant from the Route 9 Corridor, and the frequent weekday rail service which the rail arm of New Jersey Transit Corporation and Amtrak offer is yet another alternative available to the passengers of NJT Bus and Academy. Thus, their patrons are well protected from any abuse of market power.

3. Limited scope.

The proposed interim operations which NJT Bus and Academy seek is of limited scope, for it would be only for a period of fifty days, or such other time as the Board may direct, to enable the Board to consider fully the Petitioners' service pooling agreement. It would be analogous to temporary operations pending Board action on a proposed merger or acquisition of motor carriers of passengers. By permitting interim operations, the Board in no way would prejudge the outcome of the transaction before it and it would afford the Board sufficient time to consider the merits of the proposal without impairing operations.

4. Public interest

As already noted, Suburban ceased serving the Route 9 Corridor effective January 3, 2003. In order to address this emergent condition entailing the loss of a material portion of the Route 9 service and in order to ensure continuity of service to the public, NJT Bus has made a temporary arrangement to contract-out, under NJT Bus's authority, a portion of the previously pooled service. As a result, the public interest would be served by the Board's

approval of Applicants' herein expedited consideration and exemption request.

D. Environmental impact

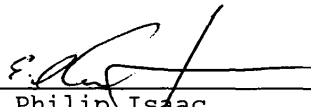
The Board's grant of the exemption will not significantly affect the quality of the human environment or the consumption of energy resources. Moreover in comparison with the prior NJT Bus-Suburban pooling agreement, the environmental impact of the service pooling agreement between NJT Bus and Academy is not expected to be any different.

WHEREFORE, Petitioners, NJT Bus and Academy pursuant to 49 U.S.C. 13541(a), ask that they be exempted from 49 U.S.C. 13302 and 49 C.F.R. 1184.3, so as to enable them to conduct interim operations under their service pooling agreement for a period of not more than fifty days, or such other time the Board may direct, pending Board action on Petitioner's application, contemporaneously filed, seeking Board approval of the agreement.

Respectfully submitted,

NJ TRANSIT BUS OPERATIONS, INC.
By its attorney,

DAVID SAMSON
Attorney General of New Jersey

By: 
E. Philip Isaac
Deputy Attorney General
One Penn Plaza East
Sixth Floor
Newark, NJ 07105-2246
Tel.: (973) 491-7037

ACADEMY LINES, L.L.C.

By its attorney,

JOSEPH J. FERRARA, ESQ.

By: 

Joseph J. Ferrara, Esq.
111 Paterson Avenue
Hoboken, New Jersey 07030
Tel.: (201) 798-5010

Dated: January 22, 2003